

May 12, 2006

Mark McClellan, M.D., Ph.D.
Administrator
Centers for Medicare & Medicaid Services
200 Independence Ave., S.W., Room 314G
Washington, D.C. 20201

RE: Proof of U.S. Citizenship for Medicaid (DRA Sec. 6036)

Dear Dr. McClellan:

On behalf of the Tribal Technical Advisory Group, I am providing the TTAG's recommendations for complying with the new proof of U.S. citizenship requirement for Medicaid eligibility as ordered in Sec. 6036 of the Deficit Reduction Act. Earlier this month the TTAG met by conference call with CMS official Bob Tomlinson with whom we shared our concerns about the likely adverse impact of this provision on American Indians and Alaska Natives who are U.S. citizens but may not possess documentation to prove it. Mr. Tomlinson invited us to submit our recommendations and we agreed to do so.

Mr. Tomlinson explained that a Medicaid beneficiary or applicant must produce two types of documentation: proof of identity and proof of U.S. citizenship. We understand that documentation showing enrollment in a Federally-recognized Indian tribe will be acceptable for proof of *identity*, but at this point, that documentation is not among the acceptable documents to prove *U.S. citizenship*. The TTAG believes that tribal enrollment documents should be acceptable proof of U.S. citizenship where the beneficiary or applicant does not possess a birth certificate, passport or other such citizenship documentation.

The TTAG fears that many enrolled tribal members will have no means other than tribal enrollment to prove citizenship. We are particularly concerned about elders and other tribal members who have never obtained a passport, do not have access to a birth certificate or may have been born at home and the birth was not recorded with the state. Many traditional AI/AN families have not needed such documentation before now.

Thus, the TTAG recommends that proof of enrollment in a Federally-recognized Indian tribe or a Certificate of Degree of Indian Blood (CDIB) issued by the U.S. Department of the Interior, be designated by CMS as acceptable proof of U.S. citizenship, or at least as a rebuttable presumption of citizenship. Any individual applying for or renewing his/her Medicaid coverage would, of course, have to certify (presumably under

oath) that he/she is, in fact, a U.S. citizen, and would be subject to prosecution for fraud if that certification is false. To the extent the state Medicaid plan believes that an individual has falsely asserted citizenship through use of a tribal enrollment document or CDIB, it would be able to challenge the application.

We understand that CMS may be particularly concerned about proving the citizenship of enrolled members from the few tribes whose historical lands are located along the Canadian and Mexican borders. We do not believe this is a problem of any significance, nor should the fact that some Indian nations historically inhabited lands that extend beyond the later-established U.S./Canada/Mexico political borders drive Native American eligibility requirements for Medicaid. Frankly, it is far less likely that an AI/AN would be motivated to fraudulently certify his/her citizenship in order to qualify for Medicaid than would a non-Indian, as the AI/AN is still entitled to care at an IHS/tribal facility even if the individual cannot enroll in Medicaid.

It is ironic that Native Americans, our country's first citizens, are faced with the need to prove their citizenship with documents other than their tribal membership papers. As you know, AI/ANs are already woefully under-enrolled in Medicaid, and this new requirement will further exacerbate the problem unless CMS accepts tribal enrollment and CDIB documents to show U.S. citizenship.

We urge CMS to adopt the TTAG's recommendations as described in this letter. Thank you again for the support you have demonstrated for assuring full AI/AN access to the Medicaid program.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Valerie Davidson', with a long, sweeping flourish extending to the right.

Valerie Davidson, Chair
Tribal Technical Advisory Group

cc: Dr. Charles W. Grim, Director, IHS
Bob Tomlinson, CMS
Dorothy Dupree, CMS
Priya Helweg, CMS
TTAG Members